

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

4 JOSHUA J. GIPSON,

Case No. 2:23-cv-00099-CDS-DJA

5 Petitioner

SCREENING ORDER

6 v.

7 JEREMY BEAN, *et al.*,

8 Respondents

10 *Pro se* Petitioner Joshua Gipson filed a Petition for Writ of Habeas Corpus pursuant to 28
 11 U.S.C. § 2254. ECF No. 1-1 (“Petition”). Gipson also filed a motion for leave to proceed *in forma*
 12 *pauperis* (“IFP”). ECF No. 1. This matter comes before the court on initial review of the Petition
 13 under the Rules Governing Section 2254 Cases (“Habeas Rules”). I grant Gipson’s IFP
 14 application and, for the reasons discussed below, I direct service of the Petition.

15 I. BACKGROUND¹

16 Gipson challenges a conviction and sentence imposed by the Eighth Judicial District
 17 Court for Clark County (“state court”). *State of Nevada v. Joshua Gipson*, case no. C-19-338507-1. On
 18 December 28, 2020, the state court entered a judgment of conviction, pursuant to a plea of guilty
 19 but mentally ill, for conspiracy to commit robbery, robbery with the use of a deadly weapon, and
 20 battery with the use of a deadly weapon resulting in substantial bodily harm. Gipson was
 21 sentenced to an aggregate term of 15 to 40 years. Gipson did not file a direct appeal.

22 On August 27, 2021, Gipson filed a state petition for writ of habeas corpus. *Joshua Gipson v.*
 23 *State of Nevada*, case number A-21-840211-W. The state court denied post-conviction relief on
 24 November 20, 2021. Gipson filed a post-conviction appeal, and the Nevada Court of Appeals
 25 affirmed on June 23, 2022. Remittitur issued on July 18, 2022. On October 19, 2022, the state

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 28 ¹ I take judicial notice of the online docket records of the Eighth Judicial District Court and Nevada
 appellate courts. These docket records may be accessed by the public online at:
<https://www.clarkcountycourts.us/portal> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 court entered an amended judgment of conviction,² amending Gipson's credit for time served
 2 from 676 days to 740 days. On or about January 19, 2023, Gipson initiated this federal habeas
 3 corpus proceeding. ECF No. 1-1.

4 **II. DISCUSSION**

5 Habeas Rule 4 requires the assigned judge to examine the habeas petition and order a
 6 response unless it "plainly appears" that the petition is not entitled to relief. *See Valdez v.*
 7 *Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen and dismiss
 8 petitions that are patently frivolous, vague, conclusory, palpably incredible, false, or plagued by
 9 procedural defects. *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908
 10 F.2d 490, 491 (9th Cir. 1990) (collecting cases). I find that a response is warranted in the instant
 11 case.

12 **III. CONCLUSION**

13 It is therefore ordered that the application to proceed *in forma pauperis* (ECF No. 1) is
 14 granted.

15 It is further ordered that the Clerk of Court is instructed to (1) file the petition (ECF No.
 16 1-1), (2) add Nevada Attorney General Aaron D. Ford as counsel for Respondents, and (3)
 17 electronically serve the Nevada Attorney General with the petition (ECF No. 1-1), a copy of this
 18 order, and all other filings in this matter by regenerating the notices of electronic filing.

19 It is further ordered that Respondents will have 60 days from the date the petition is
 20 electronically served to appear in this action and answer or otherwise respond to the petition.

21 It is further ordered that if Respondents file an answer to the petition, Gipson will have
 22 30 days to file a reply to the answer. If Respondents file a motion to dismiss instead of an
 23 answer, the parties will brief the motion in accordance with LR 7-2 and 7-3 of the Local Rules of
 24 Practice.

25 It is further ordered that any procedural defenses Respondents raise in this case must be
 26 raised together in a single consolidated motion to dismiss. Procedural defenses omitted from
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28 ² When a state court issues an amended judgment of conviction, it is considered "a new judgment, starting a new one-year statute of limitations." *Smith v. Williams*, 871 F.3d 684, 688 (9th Cir. 2017) (reasoning that the amended judgment is "the one pursuant to which the petitioner is incarcerated").

1 such motion to dismiss will be subject to potential waiver. Respondents will not file a response
2 in this case that consolidates their procedural defenses, if any, with their response on the merits,
3 except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
4 Respondents do seek dismissal of unexhausted claims under § 2254(b)(2), they must do so
5 within the single motion to dismiss, not in the answer, and specifically direct their argument to
6 the standard for dismissal under § 2254(b)(2) as set forth in *Cassett v. Stewart*, 406 F.3d 614, 623–
7 24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, will be included with
8 the merits in an answer. All procedural defenses, including exhaustion, instead must be raised
9 by motion to dismiss.

10 It is further ordered that in any answer filed on the merits, Respondents must
11 specifically cite to and address the applicable state court written decision and state court record
12 materials, if any, regarding each claim within the response as to that claim.

13 It is further ordered that Respondents must file the state court exhibits relevant to their
14 response to the petition in chronological order.

15 It is further ordered that all state court records and related exhibits must be filed in
16 accordance with LR IA 10-3 and LR IC 2-2 and include a separate index identifying each exhibit
17 by number or letter. The index must be filed in CM/ECF's document upload screen as the base
18 document to receive the base docket number (e.g., ECF No. 10). Each exhibit must then be filed
19 as “attachments” to the base document—the index—to receive a sequenced sub-docket number
20 (e.g., Exhibit A (ECF No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so
21 forth). If the exhibits will span more than one filing, the base document in each successive filing
22 must be either a copy of the index or volume cover page. *See* LR IC 2-2(a)(3)(A).

23 It is further ordered that the hard copy of any exhibits shall be delivered—for this case—to
24 the Reno Clerk's Office. Courtesy copies of exhibits shall not be provided.

25 DATED this 20th day of January 2023.

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UNITED STATES DISTRICT JUDGE